

ST 96-20

Tax Type: SALES TAX

Issue: Tax Collected and Not Remitted  
Unreported/Underreported Receipts (Fraud)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE

STATE OF ILLINOIS

v.

TAXPAYER

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) NTL. #

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) Mimi Brin

) Administrative Law Judge

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RECOMMENDATION FOR DISPOSITION

**Appearances:** Mark Dyckman, Special Assistant Attorney General, for the Illinois Department of Revenue

**Synopsis:**

This matter comes on for hearing pursuant to TAXPAYER's (hereinafter referred to as "TAXPAYER" or the "Taxpayer") timely protest of Notice of Tax Liability XXXXX issued by the Illinois Department of Revenue (hereinafter referred to as the "Department") for Retailers' Occupation Tax and related taxes for the taxable period of August 1, 1989 through December 31, 1992. During the administrative proceedings, following receipt of documents from the taxpayer and prior to the commencement of the instant hearing, the Department revised its assessment to reflect a reduced liability. The question at the hearing was whether the tax liability, as reduced by the Department, should be affirmed. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department.

**Findings of Fact:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Correction of Returns, and the revisions thereto, showing a total liability

due and owing in the amount of \$323,087, inclusive of tax, penalty and interest, calculated to September 7, 1995. Tr. pp. 9-11; Dept. Ex. No. 1, 2

2. The taxpayer is a retailer doing business in Illinois. Tr. pp. 8-9; Dept. Ex. No. 1; Taxpayer Ex. No. 2

3. The Department audited taxpayer for the taxable period of August, 1989 through December, 1992. Dept. Ex. No. 1, 2

4. During the course of the pre-hearing process, the taxpayer forwarded to the Department documents regarding the Department's original assessment following audit, resulting in a revised assessment amount. Tr. p. 10; Dept. Ex. 2

5. Taxpayer admits tax liability for certain of the "Global Taxable Exceptions" detailed by the Department. Taxpayer Ex. No. 2

**Conclusions of Law:**

The Retailers' Occupation Tax Act, 35 **ILCS** 120/1 *et seq.* (hereinafter referred to as the "ROTA") provides, in pertinent part, that:

It shall be presumed that all sales of tangible personal property are subject to tax under this Act until the contrary is established, and the burden of proving that a transaction is not taxable hereunder shall be upon the person who would be required to remit the tax to the Department if such transaction is taxable.

35 **ILCS** 120/7 Further, as a retailer, the taxpayer is required to keep books, records, papers and documents supporting the taxable nature of its sales. *Id.* The instant matter is one in which the taxpayer did not have documentation to support the averred non-taxable nature of its sales.

Pursuant to Illinois statute and case law, the Department's Correction of Returns is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due, as shown therein. A.R. Barnes and Co. v. Department of Revenue, 173 Ill. App.3d 826 (1st Dist. 1988) Once the Department establishes the *prima facie* correctness of the amount of tax due via the admission into evidence of its Correction of Returns (*id.*) the taxpayer must show that the Department's correction was not correct. *Id.* And, "[i]n order to overcome the presumption of validity attached to the Department's corrected returns" the taxpayer "must produce

competent evidence, identified with their books and records and showing that the Department's returns are incorrect." Copilevitz v. Department of Revenue, 41 Ill.2d 154 (1968); Masini v. Department of Revenue, 60 Ill. App.3d 11 (1st Dist. 1978). Oral testimony is not sufficient to overcome the prima facie correctness of the Department's determinations. A.R. Barnes & Co. v. Department of Revenue, *supra*

In this matter, taxpayer's president testified that, although taxpayer owed the pertinent taxes on a number of its sales (Taxpayer Ex. 2), other sales made by it to specific customers were exempt from taxation for various reasons. Tr. pp.12-13 However, this oral testimony, absent documentary evidence, is not sufficient either by statute or by court decisions to overcome the *prima facie* correctness of the Department's assessment. Copilevitz v. Department of Revenue, *supra*; A.R. Barnes & Co. v. Department of Revenue, *supra*.

WHEREFORE, for the reasons stated above, it is my recommendation that Notice of Tax Liability XXXXX be affirmed as revised.

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Mimi Brin  
Administrative Law Judge